Attachment 2

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March 25, 1982

Honorable Board of Supervisors
County of San Diego
335 County Administration Center
San Diego, California 92101

Honorable Board:

Re: Cajon Plaza, Inc. v. San Diego County Flood Control District, 4 Civ. No. 24193

Attached is the decision of the Court of Appeal affirming judgment in our favor in the above matter. As you will recall, this matter concerned Cajon Plaza's contention that the trial court erred in interpreting a lease between Cajon Plaza, Inc. and San Diego County regarding the termination date of the leasehold interest and the extent of the boundaries of the leasehold estate.

These issues arose as a result of our eminent domain action for constructing a flood control channel bordering the leasehold estate. Cajon Plaza cross-complained for inverse-condemnation and declaratory relief contending a strip of land in the condemnation action was part of its leasehold entitling it to compensation for inverse condemnation of that strip. Cajon Plaza further contended its leasehold interest terminates in the year 2010, rather than 2005 as we contended. Both the trial court and the Court of Appeal agreed after reviewing all the evidence and testimony that Cajon Plaza's contentions were without merit.

Very truly yours,

DONALD L. CLARK, County Counsel

By Bruce W. Beach
BRUCE W. BEACH, Deputy

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cc: Ed Cornett
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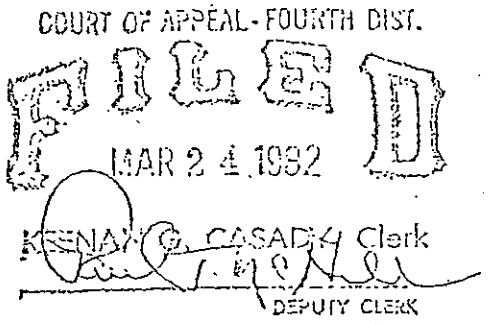
NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA



CAJON PLAZA, INC.,

Cross-Complainants and Appellant,

v.

SAN DIEGO COUNTY FLOOD CONTROL DISTRICT,

Cross-Defendant and Respondent.

4 Civ. No. 24193

(Super. Ct. No. 381320)

APPEAL from a judgment of the Superior Court of San Diego County, Daniel C. Leedy, Judge. Affirmed.

Cajon Plaza, Inc. (Cajon) appeals a judgment in condemnation favoring the San Diego County Flood Control District (District) and challenges a decision on Cajon's cross-complaint for inverse condemnation and declaratory relief. Cajon claims the trial court erred in interpreting a written amendment to a lease as not affecting either the termination date of its leasehold interest of the year 2005, or the boundaries of the

leasehold estate. We find Cajon's contentions without merit and affirm the judgment.

Factual and Procedural Background

On June 1, 1953, San Diego County (County) acquired the Gillespie Field property where the leasehold in issue was located, from the United States Government. The lease was originally granted to Earl F. Brucker, Cajon's predecessor in interest on August 16, 1955, for a term of twenty years renewable for an additional thirty years through a series of three ten-year options. The leasehold estate consisted of approximately seventy acres, described by reference to a map attached to the lease, with easterly and southerly boundaries running one hundred feet inside the boundaries of Gillespie Field. The southern boundary is the area in dispute.

During the first three years of the lease, it was amended five times to clarify miscellaneous matters not pertinent to this appeal. However, on March 28, 1960, a sixth amendment restated the entire lease, incorporating the five previous amendments into one document. Upon restatement, the term clause was repeated, providing in pertinent part:

> "1. The term of this lease shall be for a period of twenty (20) years from the date hereof, with the further right to the Lessee at the expiration of said twenty years to renew for a period of ten (10) additional years, and the further right at the expiration of said additional ten years to renew for an additional ten (10) years, and with the further right at the expiration of said

second additional ten (10) year period to renew for an additional ten (10) years, upon the same terms and conditions." (Italics added.)

In addition, the amendment incorporated by reference and attachment a different map of the leasehold showing the after-constructed Wing Avenue located along the southern boundary of the premises. Cajon asserts this map establishes a new southern boundary of the leasehold located fifty feet inside the southern boundary of Gillespie Field, rather than the original southern boundary 100 feet inside the south line of Gillespie Field.

On August 3, 1960, Brucker requested the County Board of Supervisors assign the original lease to Cajon, which the Board approved on December 6, 1960. On July 11, 1975, before expiration of the original 20-year term on August 16, 1975, Cajon gave 30 days written notice of its intent to exercise the first 10-year option under the terms of the 1955 lease as amended and assigned.

On April 30, 1976, the District filed an eminent domain action for the purpose of constructing a flood control channel. Cajon cross-complained for inverse condemnation and declaratory relief contending a strip of land in the condemnation action was part of its leasehold entitling it to compensation for inverse condemnation of that strip. The flood control channel lies within the east-west strip running 50 to 100 feet

inside the southern boundary of Gillespie Field. Cajon further sought a declaration its leasehold interest terminates in the year 2010, rather than 2005, as alleged by the District. Each of these contentions is based upon Cajon's interpretation the amendment modified the boundaries and the term of the original lease. The trial court denied declaratory relief, concluding the amendment changed neither the boundaries nor extended the original lease term.

The Trial Court Properly Construed The Amended Lease

Cajon asserts the trial court erred in concluding the leasehold interest terminated in the year 2005, because the unambiguous language of the sixth amendment specifies the year 2010 as the date of termination by treating the date of the amendment as controlling. Also, Cajon urges the court erred in determining the southern boundary of the leasehold to be one hundred feet, rather than fifty feet, north of and parallel to the southern boundary of Gillespie Field. Cajon reasons these errors of interpretation stem from improper consideration of extrinsic evidence of the parties' intent.

The trial court properly admitted extrinsic evidence relevant to the parties' intent as expressed within the amended lease. "The test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face,

but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." (Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co., 69 Cal.2d 33, 37; Mission Valley East, Inc. v. County of Kern, 120 Cal.App.3d 89, 98.) In light of the repetitive use of the same language of "from the date hereof" in restating the term provision in the sixth amendment, an inevitable ambiguity arose from which date, i.e., the date of either the original lease or the amendment, the term runs. Likewise, an inevitable ambiguity arose by incorporating a plat without the disputed boundary distance attached to the original lease. Faced with these uncertainties, the trial court properly considered the circumstances surrounding the transaction, to determine intention of the parties. (Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co., supra, 69 Cal.2d 33, 38-40; Mission Valley East, Inc. v. County of Kern, supra, 120 Cal.App.3d 89, 98.) Thus, "[o]ur review of the trial court's interpretation of the agreement is governed by the settled rule that where extrinsic evidence has been properly admitted as an aid to the interpretation of a contract and the evidence conflicts, a reasonable construction of the agreement by the trial court which is supported by substantial evidence will be upheld." (In re Marriage of Fonstein, 17 Cal.3d 738, 746-747; 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 258, pp. 4248-4249.)

Our independent review of the entire record reveals the trial court's interpretation of the lease as amended is reasonable and amply supported by substantial evidence. The original lease clearly shows the parties intended the term to run from the date of the lease and the southern boundary of the leasehold to be one hundred feet north and parallel to the southern boundary of Gillespie Field. As reflected by the text of the sixth amendment and the "Assignment of Lease", the underlying intent of the parties in drafting the sixth amendment was merely to incorporate the previous five amendments and the original lease into one document for the purpose of clarity. There is no evidence either party intended to alter either the term or boundaries of the original lease. Regarding the southerly boundary, the plat attached to the sixth amendment is silent as to the distance between the two boundaries. This is consistent with the evident purpose of the plat to merely graphically illustrate the use thus far of the property, and the improvements constructed upon it, as supported by Edward Cornett's testimony and the text of the amendment. Having not disputed the other boundaries of the leasehold, Cajon admits that at no time during the negotiation of the sixth amendment to the lease did either party discuss expanding the leasehold area by adjusting the southern boundary. We query: If the other boundaries remained unchanged, then how could this be so

if the southern boundary had been readjusted fifty feet to the south?

Likewise, regarding the date from which the term runs, the record lacks evidence showing the parties intended to change the beginning date of the lease. Brucker's written assignment to Cajon states the purpose of the sixth amendment was to "incorporate all the previous amendments to the original lease and the original lease into one document." Consequently, repeating the original term provision within the sixth amendment does not show the parties' intent to change the beginning date of the lease. In fact, on the eve of the expiration of the first twenty-year term running from the date of the original lease, Cajon gave unqualified notice dated July 11, 1975, to the County informing the latter of its intent to exercise its option to extend the lease for an additional ten years. At that time, Brucker and his son visited Cornett at his office and did not mention any confusion or dispute regarding the beginning date of the leasehold term. Had they really believed the term commenced March 28, 1960, the date of the sixth amendment, they would have voiced some objection, as their exercise of the option would not have been due until March 28, 1980. In face of ambiguity, we follow the settled rule of practical construction which "is predicated on the common sense concept that 'actions speak louder than words.' Words are frequently

but an imperfect medium to convey thought and intention. When the parties to a contract perform under it and demonstrate by their conduct that they knew what they were talking about the courts should enforce that intent." (Crestview Cemetery Assn. v. Dieden, 54 Cal.2d 744, 754; 1 Witkin, Summary of California Law (8th ed. 1973) Contracts, § 527, p. 449.)

Finally, Civil Code section 1069, which is applicable to leases (Upton v. Toth, 36 Cal.App.2d 679, 686), provides: "A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor." (Italics added.) In light of the cited ambiguities, "the obvious public policy behind section 1069 would seem to call for application of its rule to the dispute here over the 'location' of one of the . . . boundaries" (White v. State of California, 21 Cal.App.3d 738, 767) and from which date the original term of the leasehold runs.

Judgment affirmed.

WORK, J.

WE CONCUR:

VIENER, Acting P.J.

CAZARES, J.*